



EMPLOYMENT TRIBUNALS

Claimant
Ms S Pruce

v

Respondent
Bubbles Nurseries Limited

Heard at: London South by CVP

On: 28 June 2021

Before: Employment Judge Truscott QC

Appearances:

For the Claimant: in person
For the Respondent: Mr K Ali of Counsel

JUDGMENT

The claim of unfair dismissal was presented outside the primary time limit contained in section 111(2) of the Employment Rights Act 1996 and it was reasonably practicable for the claim to be presented within the primary time limit. The claim of unfair dismissal is dismissed.

REASONS

Preliminary

1. This preliminary hearing was fixed in order to consider whether the claim of unfair dismissal was lodged within time and, if not, whether the time for lodging the claim of unfair dismissal should be extended to allow the claim to proceed. The claim can still be considered by the Tribunal even though it has been presented out of time if it was not reasonably practicable for the claim to be presented in time and it was presented within a reasonable time period.

2. The Claimant gave evidence on her own behalf. There was a bundle of documents to which reference will be made where necessary.

3. Chronology

1. The Claimant resigned with effect from 25 June 2020.
2. The primary time limit for presenting a claim of unfair dismissal is three months beginning with the date of termination – 24 September 2020.
3. The Claimant received an ACAS early conciliation certificate on 23 October 2020.
4. The Claimant's claim was presented to the Tribunal on 23 October 2020.

Evidence

4. The Claimant accepted that her claim was lodged outwith the three month period. She had been ill from October 2019 onwards. She was able to correspond with the Respondent, raise a grievance and an appeal [30]. Following her resignation, she received medical treatment for anxiety and depression on 2 July when she was prescribed 50mg of Sertralin. She felt unwell at this dosage and it was increased to 100mg on 31 July 2020.
5. She had been receiving advice from ACAS since February 2020 including about her resignation letter and probably was told about the time limit.

Submissions

6. The Tribunal received oral submissions from both parties.

Law

7. Section 111(2) of the Employment Rights Act 1996 (ERA 1996) provides:
“an Employment Tribunal shall not consider a complaint...unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination.”
8. A Tribunal may only extend time for presenting a claim where it is satisfied of the following:
“It was “not reasonably practicable” for the complaint to be presented in time
The claim was nevertheless presented “within such further period as the Tribunal considers reasonable” (Section 111(2)(b), ERA 1996.)
9. There are two limbs to this formula. First, the employee must show that it was not reasonably practicable to present the claim in time. The burden of proving this rests on the Claimant (**Porter v. Bandrige Ltd** [1978] ICR 943 CA). Second, if she succeeds in doing so, the Tribunal must be satisfied that the time within which the claim was in fact presented was reasonable.
10. In **Dedman v. British Building Engineering Appliances Ltd.** [1974] ICR 53 Lord Denning held that ignorance of legal rights, or ignorance of the time limit, is not just cause or excuse unless it appears that the employee or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences. Scarman LJ indicated that practicability is not necessarily to be equated with knowledge, nor impracticability with lack of knowledge. If the applicant is saying that he did not know of his rights, relevant questions would be:
‘What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? Should there prove to be an acceptable explanation of his continuing in ignorance of the existence of his rights, it would be inappropriate to disregard it, relying on the maxim “ignorance of the law is no excuse”.

The word “practicable” is there to moderate the severity of the maxim and to require an examination of the circumstances of his ignorance’

11. This approach was endorsed in **Walls Meat Co. Ltd. v. Khan** [1979] ICR 52. Brandon LJ dealt with the matter as follows:

‘The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him’.

12. **Palmer & Saunders v. Southend-on-Sea Borough Council** [1984] ICR 372 CA followed this line and talked in terms of reasonable possibility at page 384-385.

Discussion and decision

13. The Tribunal accepted the evidence of the Claimant that she was depressed and anxious. She said she was unable to carry out the most ordinary functions in the period after her resignation. The Tribunal understood that she was prescribed high dosages of anti depressant. However, the Tribunal did not understand her condition to be so debilitating that she could not have lodged her claim in time. There was no medical evidence provided by the Claimant to support her evidence that she was unable to submit the ET1. She was aware of the time limit. If her illness was so debilitating, there was no explanation of what changed to enable her to lodge the claim in October.

14. The Tribunal concluded that it was reasonably practicable for the Claimant to lodge her claim in time and her claim is dismissed.

Employment Judge Truscott QC
Date: 28 June 2021